

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF ARIZONA  
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5 In Re: Bard IVC Filters ) MD-15-02641-PHX-DGC  
6 Products Liability Litigation )  
7 ) Phoenix, Arizona  
8 ) March 19, 2021  
9 ) 8:58 a.m.  
10

11 BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 TELEPHONIC STATUS CONFERENCE  
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Transcript Prepared with Computer-Aided Transcription

**T E L E P H O N I C   A P P E A R A N C E S**

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Also present: Russell Gaudreau

**P R O C E E D I N G S**

THE COURTROOM DEPUTY: This is MDL case number 15-2641, In Re Bard IVC Filters Products Liability Litigation, on for telephonic status conference.

Counsel, please announce for the record.

MR. GOSS: Tim Goss for the plaintiffs.

MR. O'CONNOR: Your Honor, Mark O'Connor, co-lead for the plaintiffs in the MDL.

MR. NORTH: Your Honor, Richard North for the defendants.

MR. CONDO: Good morning, Your Honor. James Condo on behalf of defendants.

THE COURT: Anybody else?

Okay. Good morning, everybody.

I want to talk about three things, and then if there's any other matters you all want to raise, we can do that.

The first topic is the 200 dismissed cases that were addressed in Case Management Order Number 49. I've received the status report that was filed by Matthews & Associates and Freese & Goss this week, and I've read that. That report is at Docket 21962. And it indicates that some of the additional -- some of the 200 cases have been resolved. Looks like the parties had a fair amount of success in tracking down

08:59:43 1 additional folks.

2           There are 129 cases that remain either in the status  
3 of nonresponsive or plaintiff is deceased with no known heir,  
4 or cannot be located.

09:00:04 5           Hold on just one second, my grandson is playing the  
6 piano, I'll be right back.

7           He's not a great pianist; he's five years old.

8           Okay.

9           I assume, Mr. Goss, you've seen there is a document  
09:00:32 10 filed this week on behalf of a plaintiff by the name of Dennis  
11 Word, that's at Docket 21955, by an attorney indicating that  
12 they found an heir, a son, that wants to accept the  
13 settlement?

14           MR. GOSS: Your Honor, I had not seen that; I  
09:00:53 15 certainly will take a look at it.

16           THE COURT: It's 21955. If you could take that into  
17 account.

18           MR. GOSS: Okay.

19           THE COURT: I've read the request in the status  
09:01:12 20 report for an additional 60 days. Mr. Goss, if you want to  
21 say anything more on that I'm happy to hear what you have to  
22 say, but I did read carefully what you had filed.

23           MR. GOSS: Just generally, Your Honor, we recognize  
24 the Court's been very accommodating and patient with us on  
09:01:28 25 this issue, and we would not have asked for the additional

09:01:31 1 time if this was a situation where these were just folks that  
2 were refusing to make a decision. What concerns us is that  
3 all of the people we're unable to locate, and in particular  
4 some of the hardship stories that we suspected all along are  
09:01:47 5 starting to come to light as we do get ahold of people, and  
6 weighing all those factors together, we felt compelled to ask  
7 the Court for another extension.

8 THE COURT: All right.

9 Mr. North, Mr. Condo, do you have any thoughts on  
09:02:04 10 that issue?

11 MR. NORTH: Your Honor, Richard North for the  
12 defendants. We have no objection and defer to the Court and  
13 the plaintiffs' attorneys on that.

14 THE COURT: Okay.

09:02:22 15 I certainly understand the reason for the request,  
16 but this is a situation where I accepted the parties' proposed  
17 settlement schedule almost exactly two years ago, March 21st  
18 of 2019. At that time we provided that there was about six  
19 months to negotiate and if there was an executed release or  
09:02:54 20 term sheet as of November 1st, then there would be dismissals  
21 as of May 1st, 2020.

22 So we set more than a year to get those settlements  
23 done.

24 We later extended the May 1st deadline to  
09:03:11 25 November 2nd of 2020.

09:03:14 1 We then extended the November 2nd deadline to  
2 March 15th of 2021. And when I granted that extension, I said  
3 in Case Management Order Number 49, and I'm quoting here, "As  
4 stated on the record and agreed to by counsel for both sides,  
09:03:39 5 the Court will dismiss with prejudice any case in which, on  
6 March 15th, 2021, the plaintiff or their heirs cannot be  
7 located, the plaintiffs remain nonresponsive, or the  
8 plaintiffs failed to make a settlement decision. Those cases  
9 will be dismissed with prejudice for failure to prosecute."

09:04:02 10 My conclusion is that two years is -- has been ample  
11 time to try to locate folks, and even with the pandemic, to  
12 give them a full and fair opportunity to accept settlements.  
13 In fact, the last two extensions were largely due to  
14 conditions brought on by the pandemic.

09:04:24 15 And so I'm going to stand by the dates that were in  
16 Case Management Order Number 49 and we're going to dismiss  
17 with prejudice the cases that still have no known heirs or are  
18 nonresponsive or cannot be located.

19 And what that means, Mr. Goss, is that we need to get  
09:05:00 20 two things from you, two lists. We need to get from you the  
21 list of 129 cases, or it may be 128 with this Mr. Word having  
22 been found, where they can't be located or you can't find  
23 heirs or they're not responsive, and that list needs to  
24 include the plaintiff's name, the plaintiff's case number, and  
09:05:29 25 the date and docket number of the previous order we entered

09:05:36 1 dismissing their case without prejudice.

2 So we need each of those items of information for  
3 every one of the individuals who fall into these categories.  
4 So, again, that's their name, case number, and the date and  
09:05:55 5 docket number of the previous order we entered dismissing them  
6 without prejudice.

7 And once we have that list in hand, we are going to  
8 amend the orders in each of those cases to dismissals with  
9 prejudice.

09:06:14 10 The second thing that we need is a list from you,  
11 Mr. Goss, of the 13 plaintiffs who have opted out of  
12 settlements, as indicated in your report. And for them we  
13 need the same information: That is, the plaintiff, their case  
14 number, and the date and document number of the order  
09:06:37 15 dismissing them. And what we will do with those 13 is  
16 reinstate their case and we will transfer or remand them to  
17 their home courts.

18 I don't think, and correct me if I'm wrong on this,  
19 that we need to do anything with regard to the 57 plaintiffs  
09:07:01 20 who have accepted settlements and the one plaintiff who simply  
21 wants her case closed. I assume those just remain dismissed  
22 without prejudice and you all document the releases that the  
23 people give for the settlements and those cases are done. Do  
24 you agree with that last point?

09:07:22 25 MR. GOSS: This is Tim Goss. I do.

09:07:24 1 THE COURT: Mr. North, does that sound right to you?

2 MR. NORTH: Yes, Your Honor, it does.

3 THE COURT: And Mr. Goss, any questions on those two  
4 lists that we need to get from you?

09:07:36 5 MR. GOSS: No questions. I do have a related  
6 question, and that is I think we were actually getting people  
7 that were -- were finding people up until last week, until  
8 right before we filed this status report.

9 Let's say we get someone tomorrow or over the weekend  
09:07:58 10 or Monday that they changed their mind or we found them and  
11 they want to accept their settlement. Is there still time for  
12 those folks that are kind of in an in-between area now?

13 THE COURT: I was going to set a date for when you'll  
14 get those lists to us.

09:08:21 15 MR. GOSS: Okay.

16 THE COURT: And I'm willing to say anybody who you  
17 find up until those dates can be included in the settlement.

18 MR. GOSS: Okay.

19 THE COURT: We need to pick that date. I don't know  
09:08:34 20 if a week from today is too quick for you to get those lists  
21 or you need two weeks. What would work --

22 MR. GOSS: Well, I'm certain I'm not the one that's  
23 going to be putting them together and I'm certain my people  
24 would want me to say two weeks.

09:08:52 25 THE COURT: Okay. So let's say, then, by Friday,



09:08:55 1 April 2nd, you'll get to us those two lists. And if the 129  
2 cases drops by four or five or 10 between now and then, then  
3 you don't need to include those additional folks if you found  
4 them in that time.

09:09:14 5 MR. GOSS: Okay.

6 THE COURT: Okay. So we'll look forward to getting  
7 those lists on April 2nd and leave it to you to deal with  
8 Mr. Word.

9 Anything else we need to talk about with respect to  
09:09:31 10 the 200 dismissed cases from anybody?

11 Okay.

12 The second thing I want to talk about are what we've  
13 been calling the 950 settled cases on Track 2. These were  
14 dealt with in Case Management Order 48. We extended the  
09:09:55 15 dismissal deadline or the transfer deadline to March 15th with  
16 those as well. We know that many of those cases are  
17 resolving. Nancy has been very busy the last couple of weeks  
18 processing stipulations that have come in, and Missy Pruneau  
19 in our clerk's office, who's done the yeoman's work on  
09:10:18 20 managing the docketing on all of this, has been working on  
21 those as well.

22 We -- I think in response to an e-mail from you,  
23 Mr. North, we agreed you could file a report with respect to  
24 any remaining cases by March 26th, which is a week from today.

09:10:39 25 And I'm assuming, Mr. North, that that report will

09:10:43 1 identify cases among the 950 that have not settled and that  
2 need to be transferred or remanded. Is that your anticipation  
3 as well?

4 MR. NORTH: Yes, Your Honor, with one caveat. Those  
09:11:01 5 cases are technically settled because releases have been  
6 signed for those plaintiffs. But despite extensive  
7 encouragement by Mr. Gaudreau's office, they have not been  
8 dismissed, and we can't make them dismiss them. So they're  
9 technically settled but not dismissed. And under the Court's  
09:11:18 10 previous order, I believe the Court is ready to remand those.

11 THE COURT: How many of them are there?

12 MR. NORTH: By my count about an hour ago, there are  
13 406.

14 Of interest, though, that 406 cases, all but 25 of  
09:11:42 15 them are with five law firms that have not filed their  
16 dismissals yet.

17 THE COURT: Do you know why they have not filed their  
18 dismissals?

19 MR. NORTH: I think Mr. Gaudreau has joined the call  
09:11:57 20 a little bit late and he can probably speak better to this,  
21 but there are a variety of reasons, I think. Some are liens  
22 have not been cleared. But Mr. Gaudreau could probably  
23 address that better.

24 If you could.

09:12:10 25 MR. GAUDREAU: Yes. Sure.

09:12:11 1 Sorry, Your Honor, I joined late trying to find the  
2 dial-in.

3 So in many of these deals there are scenarios where  
4 we don't, you know, release funds until we have clearance.

09:12:24 5 For a lot of these firms, they provided releases, but there's  
6 still some hoops to jump through before payment occurs, and  
7 payment usually triggers the filing of dismissal. So, once  
8 again, it's a timing issue. If the Court's prepared to remand  
9 them, I think that's the best course of action and may speed  
09:12:41 10 up some of this.

11 THE COURT: I hate -- I hate to burden other judges  
12 with cases that are essentially resolved, but it seems to me  
13 that that's likely the best way to get them finalized.

14 (overlapping voices)

09:13:04 15 THE COURT: Get them in the hands of a judge who is  
16 going to call the lawyers and say we're going and let that be  
17 the incentive for them to document the cases.

18 So, Jeff, we ought to think about, in the order for  
19 these 406 cases, putting that in, into the order, an  
09:13:24 20 explanation for why we're doing it given the fact many of them  
21 or most of them have settled, and encouraging the judges to  
22 call in the lawyers and press them on getting the settlement  
23 documented so they recognize that ought to be the first step,  
24 rather than them thinking they've got to gear up and establish  
09:13:51 25 a full discovery schedule and everything.

09:13:55 1 THE LAW CLERK: Okay, we can add that to the  
2 remand/transfer order.

3 THE COURT: So, Mr. North, the report you're going to  
4 file a week from today I assume will have within in it the  
09:14:11 5 lists of those who have not been dismissed with the  
6 information we've been given in the past about the cases so we  
7 can go ahead and do remand and transfer orders; is that  
8 correct?

9 MR. NORTH: Yes, Your Honor. And we will break that  
09:14:26 10 down into two lists as we have in the past, one for any cases  
11 that need to be remanded through the JPML and then another  
12 list for those to be transferred.

13 THE COURT: Okay.

14 Okay, we'll look to get that on the 26th and look to  
09:14:45 15 get those cases remanded and transferred.

16 So once we've dealt with those cases and the 129, are  
17 there any other cases that we need to do anything with that  
18 you're aware of?

19 MR. NORTH: Your Honor, Richard North. I believe,  
09:15:06 20 and I don't have the data in front of me, there are a small  
21 number that may not have settled but for some reason didn't  
22 get remanded. I think it's probably less than ten, it may be  
23 even less than five. We can flag those in the report with the  
24 two lists. But my assumption is those should be remanded or  
09:15:29 25 transferred also.

09:15:30 1 THE COURT: Yeah. Okay.

2 Okay, then the intent, it's certainly been mine and  
3 sounds like your alls as well, is to have this report for  
4 every case and address every case so when we take the actions  
09:15:47 5 we've just discussed, all of the cases will be transferred  
6 back. We've got a number of them here, obviously, that I'm  
7 going to handle going forward that are Arizona-based cases,  
8 but all of the others are going to be transferred.

9 MR. NORTH: Yes, Your Honor.

09:16:08 10 THE COURT: Anything else we need to discuss on those  
11 topics we've covered?

12 MR. NORTH: Nothing from the defendants, Your Honor.

13 THE COURT: Mr. O'Connor, anything from you?

14 MR. O'CONNOR: I have nothing, Your Honor. Thank  
09:16:28 15 you.

16 THE COURT: Okay. The third topic is one I want to  
17 talk to you, Mr. O'Connor, about, which concerns Plaintiffs'  
18 Steering Committee matters. There was an ex parte filing  
19 about issues among plaintiffs' counsel and I just want to talk  
09:16:47 20 to you about timing to get those issues addressed. So why  
21 don't you stay on the call for a minute after we conclude it  
22 with everybody else, if you would, please.

23 MR. O'CONNOR: Sure.

24 MR. GOSS: Your Honor, this is Tim Goss. I'm  
09:17:04 25 concerned that if I drop off the call -- I might need to, but

09:17:07 1 if I drop off the call I don't know if I'll lose everybody or  
2 not since I'm the host.

3 THE COURT: Yeah, if you could stay on --

4 MR. O'CONNOR: Judge, if you would like, I could call  
09:17:17 5 you back at a number.

6 THE COURT: Well, the problem is it needs to be a  
7 conference number that we don't have set up. Are you all  
8 right with Mr. Goss being in on the discussion?

9 MR. O'CONNOR: I think that it's probably something  
09:17:34 10 that is probably best to stay ex parte. I'll have to pull the  
11 papers, but if you want, I can send you another conference  
12 call number.

13 THE COURTROOM DEPUTY: Your Honor, I have my own  
14 conference call number that you can use. This is Christine.

09:17:58 15 THE COURT: I'm just trying to think about timing and  
16 logistics about what else is happening.

17 THE COURTROOM DEPUTY: Judge, I'm sorry, this is  
18 Christine. I do have my own conference call number if you  
19 want to use that.

09:18:08 20 THE COURT: Okay. Do you have to set that up,  
21 Christine, or can you just give it to us all and we'll use it  
22 to call back?

23 THE COURTROOM DEPUTY: I can just give it to you and  
24 have everyone call back.

09:18:17 25 THE COURT: Okay, why don't we do that, Mr. O'Connor,

09:18:19 1 and then we'll have the courtroom call back and you and me as  
2 well.

3 MR. O'CONNOR: Thank you.

4 THE COURT: Go ahead, Christine.

09:18:29 5 THE COURTROOM DEPUTY: Sorry, computer froze, I'm  
6 pulling up the number.

7 It is 866-390-1828, and the access code is 5861608.

8 MR. O'CONNOR: Can you say that one more time. 586?

9 THE COURTROOM DEPUTY: 5861608.

09:19:12 10 MR. O'CONNOR: Okay. I'll give you a call right  
11 back.

12 THE COURT: Okay. All right. Thank you, everybody,  
13 for calling in and we'll look forward to getting that -- those  
14 reports on March 26th and April 2nd.

09:19:30 15 MR. NORTH: Thank you, Your Honor.

16 MR. GOSS: Thank you, Your Honor.

17 MR. O'CONNOR: I'll call right back.

18 (End of transcript.)

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C E R T I F I C A T E

I, PATRICIA LYONS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control, and to the best of my ability.

DATED at Phoenix, Arizona, this 1st day of April, 2021.

s/ Patricia Lyons, RMR, CRR  
Official Court Reporter